

The Welna patent relates to an indefinitely conformable intumescent putty comprising a blend of intumescent material, rubber, and unvulcanized rubber. The rubber and unvulcanized rubber together serve to provide the putty with a softness value of at least 4 mm. (See Welna col. 1, lines 27-31). Thus, the composition relies on a combination of rubber and unvulcanized rubber to form a soft putty material having a defined softness value which makes the material suitable for specific end use applications. The putty is moldable and remains in a soft, pliable condition until it is exposed to a certain elevated temperature. Such a material, while having its own utility, in no way renders the present invention unpatentable.

The present invention is directed to a flexible solid fire sealing composition comprising intumescent granules, a binder, and a phosphorus containing flame retardant, the composition having a softness value of from about 0.01 to about 3.75. Thus, in contrast to the putty disclosed by Welna, the intumescent fire sealing composition of the present invention does not include a blend of rubber and unvulcanized rubber, nor does the present invention have a softness value of at least 4 mm. As a result, the intumescent material of the present invention is not soft and malleable at room temperature and is not indefinitely conformable.

The Welna putty would have to be significantly modified both in terms of its composition and physical properties to resemble the intumescent material of the present invention, and the Welna patent does not contain any teaching or suggestion, express or implied, that the composition be modified in the manner required to meet the claims. Rather, the intumescent putty described in Welna is complete and functional in itself, so there would be no reason to modify it in any way.

Since neither Welna, or any of the remaining cited references discloses, teaches, or suggests a flexible, solid fire sealing composition as defined in independent claim 1, this claim is believed to be allowable over the cited references. The remaining dependent claims, as depending from an allowable claim, are also deemed to be in condition for allowance.

In summary, Applicant believes that the rejection of claims 1-15 under 35 U.S.C. §103(a) as being unpatentable over the U.S. patent to Welna No. 5,578,671 is unwarranted. Reconsideration of the rejection is respectfully requested.

In view of the above, it is submitted that the application is in condition for allowance. If a telephonic conference would be helpful in resolving any outstanding matters in the present application, the Examiner is encouraged to contact applicants' undersigned representative.

Respectfully submitted,

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